IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8448 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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DESAI LAXMANBHAI ARJANBHAI & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :

MMS SANGITA PAHWA, MR NAVIN K PAHWA for Petitioners Nos. 1 – 4,MR BR SHAH for Petitioner(s) : 1 - 4.
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent: 1,2,5 to 7.
MR HS MUNSHAW for Respondent No. 3,
RESPONDENT NO. 4 DELETED,
MR VIJAY H PATEL for Respondent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/02/2006

ORAL JUDGMENT

1. Ms. Sangita Pahwa, learned advocate for the petitioners seeks permission to delete Respondent No.4.

Permission granted.

2. The petitioners are residents of village Bhemosan, Taluka – Patan, District – Mehsana (Now District – Patan). The petitioners have challenged the Notification dated 14.10.1991 issued by the State Government by which two separate Gram Panchayats viz. Badipur and Bhemosan were ordered to be created. Primarily, the case of the petitioners is that the population of these two villages is extremely small in number and and two separate Gram Panchayats are not justified. It is not in dispute that prior to issuance of Notification dated 14.10.1991, there was one Gram Panchayat covering area of Badipur and Bhemosan which is Petapara of Badipur. It is the case of the petitioners that the population of these two villages was 823 and 287 respectively. The petitioners have also contended that distance between these two villages is only one kilometer. Revenue income of village Bhemosan is Rs. 662 per annum. On basis of these facts and figures, the petitioners have opposed the Notification of the State Government by which these two villages are sought to be separated by creation of separate Gram Panchayats. While admitting this petition, this Court had directed to maintain status-quo.

3. So far no reply has been filed by the State Government. Mr. Siraj Gori, learned Assistant Government Pleader appearing for the State Government, under instructions stated that subsequent to filing of the petition, elections to the local body of Gram Panchayat was held on as many as three occasions. On account of stay granted by this Court, Notification has been kept in abeyance and the Panchayats were not bifurcated.

4. From the above recording of events, it would appear that at the relevant time, the population of the villages is concerned, viz. Bedipur and Bhemosan it was only 823 and 287 respectively. In fact from the impugned Notification also these figures are borne out. As a matter of fact, Notification records that the population of Village Bhimosan is only 247. Despite, this small population, these villages were sought to be bifurcated into independent Gram Panchayats. Reasons for such step is not borne out from the record. Be that as it may, many years have been passed since the Government issued Notification way back in the year 1991. Population of both the areas would have undergone changes during this period. Revenue income of the area also would have increased. These new figures would have to be calculated

and gone into by the State Government for the purpose of deciding whether two separate Panchyats would be justified. At this point of time, it would not be proper to permit the State Government to act on the Notification dated 14.10.1991, which remained under abeyance all through pendency of this petition. Therefore, this petition is disposed of by giving following directions:

(i) Notification dated 14.10.1991 will not be acted upon by the State Government;

(ii) It will be open for the State Government to undertake fresh exercise to decide whether bifurcation of these two villages into separate Gram Panchayats is called for under the present circumstances;

(iii) While undertaking this exercise, the petitioners may be given an opportunity of making their representation; and

(iv) The elected body of the Panchayat also may be given an opportunity of making their representation.

5. With these directions, the petition is disposed of. Rule made absolute to the aforesaid extent.

[Akil Kureshi, J.]

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